IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6013 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI KHIMJI SHAH
VERSUS
THE STATE OF GUJARAT & ANR.

Appearance:
MR YS MANKAD for the Petitioner.
MR SAMIR DAVE for Respondent No.1.
None present for other Respondent.

Coram: S.K. Keshote,J
Date of decision:3.3.97

C.A.V. JUDGMENT

The petitioner is a tenant in respect of land Survey No.325 admeasuring 12 Acres - 26 Gunthas and of Survey No.326/2 admeasuring 2 Acres - 13 Gunthas in the Sim of village Sandhan, Taluka Abdasa, Kutch, and as such, he made an application before the Special Mamlatdar, Abdasa, Kutch, for declaring him as a tenant and a deemed purchaser thereof under the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 (hereinafter referred to as the `Act 1958'). Further prayer has also been made for fixation of purchase price. Under the order dated 13th July 1981, in the aforesaid case, being case No.9 of 1981, the Special Mamlatdar, Abdasa, held that the petitioner was the tenant in respect of the lands in dispute, but dismissed the application holding that the suit lands of aforesaid survey numbers were declared surplus under the Gujarat Agricultural Lands Ceiling Act, and as such, the prayer cannot be granted. Feeling aggrieved of the aforesaid order of Special Mamlatdar, the petitioner preferred an appeal, being Ten.Appeal No.2 of 1981 before the Assistant Collector, Nakthatrana, and one of the contentions, therein, raised was that the petitioner was not a party to the Ceiling proceedings and as such whatever decision taken in those proceedings was not binding on him. That contention, made by the petitioner, did not find favour of the Appellate Authority and under the order dated 20th October 1981, the appeal of the petitioner was dismissed. The petitioner preferred a revision application, being Tenancy B.K. No.8 of 1982, before the Gujarat Revenue Tribunal at Ahmedabad which was also dismissed under the order dated 1st May 1984. Hence this Special Civil Application by the petitioner.

2. Reply to this Special Civil Application has been filed on behalf of respondent No.1. The respondent No.2 has not filed any reply to the Special Civil Application. The Collector, in the reply, has given out that before the application dated 10.11.80 filed by the petitioner in the office of Mamlatdar, the Gujarat Agricultural Ceiling Act, 1960 (amended Act 1976) has already come into force. Much before the said application was filed by the petitioner, the original landlord of the land in dispute Smt. Laxmanbai Shamji Shah was paid the compensation of the lands which came to be declared as surplus lands. The proceedings were initiated under the provisions of the Agricultural Land Ceiling Act and in the proceedings under the order dated 9.6.77, the lands in question were declared to be surplus, which has also been published in accordance with law. The respondent has further come up with the case that the Land Ceiling Act has been enacted

for public welfare. The lands which were declared surplus have to be allotted to landless persons. As per Section 81 of the Tenancy Act, one third of compensation of the surplus land goes to the tenant and two-third goes to the owner. So the lands which were declared surplus vested in the Government free from all right, title and interest of any person. It has next been averred that the petitioner has not lodged any claim whatsoever of his tenancy, earlier to 10th November 1980, though ceiling matter of Smt. Laxmanbai Shamji Shah was concluded in the year 1977. The lands in question vested in the Government free from all encumbrances with effect from 9.6.77. The necessary entry in the revenue record has also been made on 30th September 1980, against which no objection has been raised by the petitioner. Last submission has been made that the petitioner claims tenancy right over the land in dispute from 1.8.71 which is a period not to be taken into consideration as after the amendment in the Act 1960, which came into force immediately, any change after 24.1.71 without permission of the competent authority was not to be taken into consideration.

3. The learned counsel for the petitioner contended that the land was in the name of petitioner in the revenue record, but still no notice was sent to him of the proceedings under the Agricultural Lands Ceiling Act. The petitioner, being not a party to those proceedings, the declaration that the disputed lands are surplus lands, is not binding on him. It has next been contended that at no point of time, the entry which has been made in favour of the petitioner in revenue record, has been challenged by the respondent. Carrying further this contention, the learned counsel for the petitioner contended that any person who is lawfully cultivating the land, is a tenant as per definition given under the Act. The petitioner was lawfully cultivating the land prior to 1971-72 and is therefore a tenant, which has been accepted by the authorities below. The authorities have committed serious error in holding that the petitioner has put forth his case of tenancy in collusion with landlord to grab the land, declared surplus in the ceiling proceedings. The learned counsel for the petitioner, in support of his contentions, placed reliance on two decisions of this Court, in the case of Raj Madhavsang Gulabsang v. Parmar Ranchhodbhai & Ors., reported in 1976 GLR 689, and in the case of Koli Nanji Motir & Ors. v. State of Gujarat & Ors., reported in 1985 GLH 414.

4. On the other hand, the learned counsel for the

respondent has supported the decisions of the authorities below, given in this case.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. From the order of Special Mamlatdar, Abdasa, I find that the petitioner's case therein was that he is cultivating the land in dispute since 1971-72. He has prayed for fixation of purchase price as he desired to purchase the land in question. On behalf of the petitioner his Power of Attorney holder was examined. From the side of respondent, Talati has made a statement that the original owner or landlord surrendered these lands, surplus lands under the provisions of the Gujarat Agricultural Land Ceiling Act, 1960. The Mamlatdar, and Agricultural Land Tribunal, under its order dated 9.6.77 ordered to enter the land in dispute as Government land in the revenue record. Vide order dated 11.6.80, it was ordered that the landlord should be paid Rs.1,690.70 as compensation for the said land. Necessary entry in the revenue record has been made on 30th September 1980, which was certified on 21st December 1980. The Talati further stated that since the actual possession of the land was with Shah Dayabhai Khimji, no actual and physical possession of the could could have been taken from him. After going through the order of the Mamlatdar, I do not find anything therein that the petitioner was cultivating the land prior to 1971-72, nor any finding has been given by that officer that the petitioner was a tenant of the land in dispute. On the basis of some entry in Village Form No.7, the Mamlatdar has given finding that it is believed that he is the tenant of these fields. From this finding, it cannot be inferred that the Mamlatdar has given a finding that the petitioner is a tenant and cultivating the land prior to 1971-72. Then next comes the decision of the Tribunal. The Tribunal, in para-7 of its judgment observed that, "now on perusing the case papers of the Mamlatdar it is true that the applicant's possession appears from the year 1971-72 for both the lands." So this is a finding of the Tribunal also that whatever be the nature of possession and whatever rights of the petitioner are there in the lands in dispute, but his possession is only from the year 1971-72. The Tribunal has held that it is difficult to conclude whether the possession of the petitioner, on the land in question, is there as a tenant or not because of the fact that in the Village Form No.7/12, neither the mode of cultivation has been mentioned nor the petitioner's name appears to have been mutated in the "other rights" column. The Tribunal is

correct to hold that the petitioner has not come up with the case that the land was leased out to him or that he has given the land on crop share basis for cultivation or he has paid the rent for use of it. The Tribunal has recorded a clear finding of fact on the basis of aforesaid fact, that it cannot be said that the applicant was cultivating the land as a tenant legally. The Tribunal concluded that the courts below have rightly and legally come to the conclusion that the petitioner has put forth his case of tenancy in collusion with the landlord to grab land, declared surplus in the ceiling proceedings.

7. In this Special Civil Application, in para-J of the petition, the petitioner has mentioned, "the petitioner is lawfully cultivating in 1971-72 and is a tenant". Now there is correction in the sentence and `in' is scored of and it is substituted by "since". Then "since" has also been scored of and substituted by "prior to". So the petitioner has tried to make out a case before this Court, as if he is lawfully cultivating the land in dispute prior to 1971-72. This case which the petitioner pleaded in the Special Civil Application is contrary to his own case with which he has gone before the Mamlatdar for declaring him to be a tenant of the land. Otherwise also, I do not find anything on record of this Specail Civil Application as well as in the order of any of the authorities that the petitioner was cultivating this land prior to 1971-72. Whatever record which has been produced on the file of the case reveals that the petitioner's possession on the land in dispute was there from 1971-72. It is the case of petitioner himself in the writ petition that the Mamlatdar has in terms held that the possession of these fields is with the petitioner since 1971-72. So there is concurrent funding of fact that the possession of the petitioner on the land in question is only from 1971-72 and not earlier to 1971-72. So the petitioner has, contrary to his own pleadings and findings of the authorities below, tried to give out as if he was in possession of the land in dispute prior to 1971-72. The petitioner has failed to establish how his tenancy rights have been accrued in his favour in the lands in dispute. The petitioner further has not produced any material on the record to show how he has come in possession on the land in dispute. The petitioner has not appeared in witness box, but on his behalf, his power of attorney has taken up proceedings and was examined. The writ petition has also been filed by his power of attorney holder and not by the petitioner himself. The power of attorney holder has filed affidavit in support of writ petition. So at no point of

time, the petitioner has come up before any authority or before this Court. In absence of any evidence on record of creation of tenancy rights of the petitioner over the land in dispute, I find it to be a case where possibly the landlord is an instrumentality in filing of this Special Civil Application through the power of attorney holder of the petitioner and as well as the proceedings before the Mamlatdar in collusion with him through his holder of power of attorney, with the sole purpose and object to defeat or to frustrate the object and purpose for which the Agricultural Land Ceiling Act has been enacted. This Court will not permit the persons to defeat the very purpose and object of the Act by colluding with landlords, i.e. holders of surplus land. The Tribunal is correct to hold that from the entries which are there in Village Form No.7/12, nothing transpires that the petitioner is entered as a tenant of the land in dispute. Tenancy has to be created by some document or it may be oral, but there must be some cogent and material evidence to show that the petitioner is lawfully inducted tenant of the land in dispute. The petitioner has not produced any evidence to show that tenancy right has created in his favour by the landlord and possession of the land was given to him legally. Merely on the basis of some entries in Village Form No.7/12 of the year 1971-72, it is difficult to accept the claim of the petitioner of tenancy of the land in dispute. The land ceiling proceedings were initiated in the year 1977 against the holder of such lands and the petitioner raised his claim of tenancy only in the year 1981, i.e. much after necessary correction has been made in the revenue record. In the land ceiling proceedings also it was not the case of the holder/owner of the land in dispute that the petitioner is in possession of same as a tenant. The petitioner's case is that since 1971, as lands under these survey numbers are in his possession and enjoyment, he is the tenant of those lands, but in absence of any cogent and satisfactory evidence of creation of tenancy, and delivery of possession, only on the basis of this possession, this claim of the petitioner cannot be accepted. No other document has been produced by the petitioner to show his possession in subsequent years, i.e. 1973-74 and onwards. In the presence of these facts, on the basis of this stray entry of petitioner's possession in Village Form No.7/12 of the year 1971-72, the tenancy's claim as made by the him cannot be accepted. I am in agreement with the finding of the Tribunal that it is a case where the petitioner has put forth his case in collusion with landlord to grab the land, declared surplus under the ceiling proceedings. On the technicalities the provisions of the ceiling Act

cannot be allowed to be defeated. Moreover, the petitioner has failed to establish his right of tenancy in the land in dispute and as such, the authorities relied by the learned counsel for the petitioner are of little help in the present case. A person of conduct of the petitioner cannot be protected by this Court in its equitable jurisdiction.

8. In the result, this Special Civil Application fails and the same is dismissed. It is a case where for all these years, the petitioner has retained possession of the suit lands. Not only that, but he also enjoyed fruits therefrom and as such, the petitioner is directed to pay Rs.1,000/- per acre per year by way of damages for use and occupation of the land in dispute to the respondent No.1, for the period from the date of interim order, i.e. 21.1.85 till this day. This amount has to be deposited by the petitioner in the office of the Mamlatdar within a period of two months from the date of receipt of certified copy of this order, failing which, the respondent shall then to proceed to realize this amount as land revenue or may take any appropriate action for violation directions of this Court. The petitioner is directed to hand over the possession of the disputed land to the respondent No.1 within a period of two months from today. In case the possession is not given to respondent No.1 by the petitioner within the period aforesaid, then he shall be liable to pay Rs.100/- per day per acre till the possession is delivered by him or taken by the respondent. The petitioner is directed to pay Rs.2,000/- as the costs of this petition to respondent No.1. Rule discharged. Interim relief stands vacated.

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